THE HON'BLE MR JUSTICE B.SESHASAYANA REDDY

-

-

WRIT PETITION NO : 11235 of 2005

Dated: 08-08-2005

-

-

Between:

M/s.C. Suresh Reddy and Co., Rep. by its Managing Partner,

C. Sailaja Reddy Plot No. 1362-Road No.45, Jublee Hills,

Hyderabad-33

..... PETITIONER

AND

1 The Chief Administrative Officer, Construction, South Central

Railway, Secunderabad.
2 The Chief General Manager, Construction, South Central

Railway, Head Quarters, Works Branch, Secunderabad.
3 The Deputy Chief Engineer (Construction) Railway Station

Premises, Khazipet,

.....RESPONDENTS

WRIT PETITION NO : 11236 of 2005

Between:

Global Constructions Co., Rep. by its Managing Partner, V. Ravikiran, Plot No. 4105, Srila Towers, Hydernagar, Kukatpally, Hyderabad - 72.

..... PETITIONER

AND

1 The Chief Administrative Officer, Construction, South Central Railway, Secunderabad.
2 The Chief General Manager, Construction, South Central Railway, Head Quarters, Works Branch, Secunderabad.
3 The Deputy Chief Engineer (Construction) Railway Station Premises, Khazipet,

..Respondents.

WRIT PETITION NO : 11244 of 2005

Between:

Y. Ramulu S/o. Buchanna
Mahabubnagar District.

..... PETITIONER

AND

1 The Chief Adminmistrative Officer, Construction, South Central Railway, Secunderabad.
2 The Chief General Manager, Construction, South Central Railway,

.....RESPONDENTS

WRIT PETITION NO : 11245 of 2005

Between:

Global Constructions Company, rep. by its Managing Partner,
V. Ravikiran S/o Late V. Prabhakar Rao, age 32 years, Flat No. 105, Srila Towers, Hydernagar, Kukatpally, Hyderabad - 72.

..... PETITIONER

AND

1 The Chief Administrative Officer, Construction, South Central

Railway, Secunderabad.
2 The Chief General Manager, Construction, South Central

Railway, Head Quarters, Works Branch, Secunderabad.
3 The Deputy Chief Engineer (Construction), Railway Station

Premises, Khazipet.

.....RESPONDENTS

-

-

-

-

-

WRIT PETITION NO : 11246 of 2005

Between:

Global Constructions Co., Rep. by its Managing Partner, V. Ravikiran, Plot No. 4105, Srila Towers, Hydernagar, Kukatpally, Hyderabad - 72.

..... PETITIONER

AND

1 The Chief Administrative Officer, Construction, South Central

Railway, Secunderabad.
2 The Chief General Manager, Construction, South Central

Railway, Head Quarters, Works Branch, Secunderabad.
3 The Deputy Chief Engineer Construction-III, South Central

Railway, Nizamabad.

.....RESPONDENTS

WRIT PETITION NO : 11247 of 2005

Between:

Global Constructions Company, Rep. by its Managing Partner, V. Ravikiran, Flat No. 4105, Srila Towers, Hyderanagar, Kukatpally, Hyderabad-72.

..... PETITIONER

AND

1 The Chief Administrative Officer, Construction, South Central

Railway, Secunderabad.
2 The Chief General Manager, Construction, South Central

Railway, Head Quarters, Works Branch, Secunderabad.
3 The Deputy Chief Engineer Construction-III South Central

Railway, Nizamabad.

.....RESPONDENTS

-

-

-

WRIT PETITION NO : 12264 of 2005

Between:

Mr.P.Indra Sena Reddy s/o.P.Sambhasiva Reddy R/o.1-7-785, Shanthinagar Hunter Road, Subudaei, Hanuma Konda, Warangal District.

..... PETITIONER

AND

1 The Chief Administrative, Officer, Construction South Central Railway, Secunderabad.
2 The Chief General Manager, Construction, South Central Railway, Head Quarters, Works Branch Secunderabad.
3 The Deputy Chief Engineer (Construction) Railway Station Premises, Khazipet.

.....RESPONDENTS

WRIT PETITION NO : 12550 of 2005

Between:

G.V.Pratap Reddy, S/o.Veera Reddy, Adm.No.3-A, Siva Sai Sanni, Plot No.32, Opp.Shirdhi Saibaba Temple, Hindinagar, Panjagutta, Hyderabad, Hyderabad Dist.

..... PETITIONER

AND

1 The Chief Administrative officer, Construction, South Central Railway, Secunderabad.
2 The Chief General Manager, Construction, South Central Railway, Head Quarters, Works Branch, Secunderabad.

.....RESPONDENTS

-

-

-

WRIT PETITION NO : 12763 of 2005

Between:

Y. Pandu Babu S/o Gajendra Rao, 202-A, Padmahamsa Apartments, S.d. Road, Secunderabad

..... PETITIONER

AND

1 The Chief Administrative Officer, Construction, Sourth Central Railway, Secunderabad.
2 The Chief General Manager, Construction, South Central Railway, Head Quarters, Works Branch, Secunderabad

.....RESPONDENTS

WRIT PETITION NO : 12765 of 2005

Between:

Y. Pandu Babu, S/o. Gajendra Rao,
202-A, Padmahamsa Apartments, S.D. Road, Secunderabad.

..... PETITIONER

AND

1 The Chief Administrative Officer, Construction, South Central Railway, Secunderabad.
2 The Chief General Manager, Construction, South Central Railway, Head Quarters, Works Branch, Secunderabad.

.....RESPONDENTS

-

WRIT PETITION NO : 13128 of 2005

Between:

K. Narasimha Reddy, s/o Krishna Reddy,
R/o D.No. -2-293/174/A/31, Plot No. 50, B.N. Reddy Colony, Hyderabad.

..... PETITIONER

AND

1 The Chief Administrative Officer, Construction, South Central Railway, Secunderabad.
2 The Chief General Manager, Construction, South Central Railway, Head Quarters, Works Branch, Secunderabad.

.....RESPONDENTS

-

-

WRIT PETITION NO : 13134 of 2005

Between:

K. Narasimha Reddy, S/o. Krishna Reddy,
R/o. D.NO. -2-293/174/A/31, Plot No.50, B.N. Reddy Colony, Hyderabad.

..... PETITIONER

AND

1 The Chief Administrative Officer, Construction, South Centrl Rilwy, Secunderbd.
2 The Chief Generl Mnger, Construction, South Centrl Rilwy, Hed Qurarters, Works Branch, Secunderbd.

.....RESPONDENTS

THE HON'BLE MR. JUSTICE B. SESHASAYANA REDDY

W.P.NOs. 11235, 11236, 11244, 11245, 11246, 11247, 12264, 12550,12763, 12765,13128,13134, OF 2005

COMMON ORDER:

Since the common issue is involved in all these writ petitions they are being heard together and disposed of by this common order.

2. The petitioners in all these writ petitions assail the action of the respondents in recovering the seigniorage charges on the ordinary earth from out of the bills payable for works executed under various agreements prior to 15.12.2004.

3. Heard the learned counsel for the petitioners and the learned Standing Counsel, appearing for the respondents.

4. Learned counsel appearing for the petitioners submits that the issue has been covered by the various decisions of this Court and it is no more res integra.

5. Learned Standing Counsel appearing on behalf of the respondents submits that all these writ petitions are liable to be dismissed on three grounds, viz., firstly, the agreements contained the clause with regard to deduction of seigniorage charges, secondly, in case of disputes, they are required to be referred to the arbitrator and thirdly, for non-joinder of necessary party i.e., the State Government, to the proceedings.

6. With regard to the first submission made by the learned standing counsel appearing for the respondents, it is relevant to refer the letter dated 17.9.2004 of the Department, which reads as follows;

> "Now, in view of G.O.No.331, dated 21-5-2000 and G.O.No.466 dated 24-8-2000 issued by Government of Andhra Pradesh, wherein the rates of

seigniorage charges applicable Mines and Minerals including stone ballast, earth, moomrom etc., have been prescribed and in view of policy decision issued by CGE vide letter No.W/44/B/IV, dated 25-6-2004, it has been decided to that in the future +tenders, the following specific clause will be added as sub-para of the main para "Taxes" in the tender conditions where items of earth work blanketing are involved in the schedule:-

"Seigniorage charges on supply of earth moorom, sand and other minerals as fixed by the State Government and payable to them is revised from time to time during the currency of contract will be recovered by railways from the contractor's on account and final bills and remitted to the State Government. The rate quoted by the tenderer shall be inclusive of these charges. Claims regarding revision of seigniorage charges and consequently enhancement of the accepted rate will not be entertained.

The above instructions should be followed immediate effect".

7. The Department also clarified in its letter dated 15-12-2004 that in case of agreements where no specific clause is provided for recovery of seigniorage charges by Railways from the contractor's on account bills, the same is not required to be recovered from the contractor's bill. But all the details may be given to the State Government on demand, so that, if required, State Government can recover the seigniorage charges directly from the contractors.

8. It is apparent from the above referred letter that unless a specific clause is included in the contract with regard to the collection of seigniorage charges on earth, no such deductions are required to be made.

9. In view of the above letters, I do not see any substance in the first submission made by the learned Standing counsel appearing for the second respondent. With regard to the second submission i.e., remedies in case of disputes between the contractor and the department, there is no question of dispute since the department itself issued instructions not to recover the amounts from the bills payable to the contractor for supply of ballast, earth, moorum and other minerals. There is no specific clause with regard to the collection of the seigniorage charges on earth in the agreements executed by the petitioners. With regard to the third submission; admittedly as the dispute is between the contractor and the Department and therefore, the State Government is not a necessary party.

10. Similar question came up for consideration in W.P.Nos.21401 of 2004 and batch dated 23-3-2005 with regard to the right of the department to deduct the seigniorage charges on earth from the bills payable to the contractors. It has been held in the above batch of writ petitions as follows;

> "Having regard to the submissions made by both the parties and in the light of the material on record particularly the letter dated 15-12-2004, extracted above, it is clear that the respondents having considered the request of the contractors, have decided not to recover the seigniorage charges from the contractor's on account billls in case there is no specific clause for recovery of seigniorage charges on supply of earth or mooram etc. They have also made it clear that for all future tenders or contracts, the specific clause to that effect shall be incorporated. By virtue of the said letter, the earlier letter dated 25-06-2004 under which instructions were issued to deduct the seigniorage charges from the bills of the contractors stood superseded".

11. The issue involved in this writ petition is squarely covered by the order passed in the above batch of writ petitions.

11. Accordingly, all these writ petitions are disposed of directing the respondents not to withhold any seigniorage charges on ordinary earth from the final bills of the petitioners in respect of the works entrusted to them under the agreements in question. However, if the amounts are already deducted, it is for the petitioners to work out the appropriate remedy for refund of the same. It is also made clear that this shall not preclude the state Government to recover the seigniorage charges directly from the petitioners, in case any such decision is taken, following due process of law. No order as to costs.

_____

08-08-2005

sj